

AMENDED IN SENATE MAY 20, 2008

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 3042

**Introduced by Committee on Public Employees, Retirement and
Social Security (Hernandez (Chair), Mullin, Soto, and Torrico)**

February 25, 2008

An act to amend Section 1094.5 of the Code of Civil Procedure, and to amend Sections 18670, 19175, 19574, 19574.1, 19574.2, 19575, 19576, 19578, 19582, and 19583 of, to repeal Sections 19173.1, 19175.3, 19570.1, 19572.1, 19576.5, 19576.6, 19582.1, and 19582.6 of, and to repeal and add Section 18575 of, the Government Code, relating to civil service.

LEGISLATIVE COUNSEL'S DIGEST

AB 3042, as amended, Committee on Public Employees, Retirement and Social Security. Civil service.

(1) Existing law, with regard to the civil service, generally provides that whenever a notice, paper, or other document, except a subpoena, is directed to be given to or served upon any person or state agency, the notice, paper, or document may be personally served or served by mail to the last known residence or business address of the addressee. Existing law requires that giving of notice of matters to be heard or considered by the State Personnel Board or the Department of Personnel Administration be governed by board or department rule. Existing law provides a specified process for service by mail of the charges in a disciplinary proceeding, the notice of an employee's suspension, and the notice of a probationer's rejection.

This bill would revise and recast these provisions. The bill would require the appointing power to provide service of notice of certain actions, including a disciplinary action, a rejection during probation, a medical action, and various termination actions, by personal service or by mail or express service carrier, pursuant to a specified process. The bill, in permitting service by Express Mail, as specified, and by overnight delivery by express service carrier, would provide that any period of notice or any right or duty to do any act or make any response is extended as specified. The bill would also require service of an appeal or complaint filed with the board to follow this process. The bill would require a signed affidavit, in a specified form, of the person making service as proof of service for all papers, ~~including~~ *excluding* appeals and complaints. The bill would require additional information on the affidavit if service is made by mail or express service carrier. The bill would delete provisions regarding matters to be heard or considered by the State Personnel Board or the Department of Personnel Administration, described above.

(2) Existing law contains various provisions relating to civil service and employer-employee relations between the state and its employees. Among other things, these provisions include procedures for disciplining state employees, including State Personnel Board investigations and hearings, the review of administrative decisions, and suspensions.

Existing law provides that certain of those disciplinary procedures do not apply to, and provides alternative procedures for, state employees in State Bargaining Unit 8 and state employees in State Bargaining Unit 11 who have been disciplined for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement. Existing law also provides that certain of those disciplinary procedures, as they apply to members of State Bargaining Units 8, 12, and 13, are subject to modification pursuant to the terms of a memorandum of understanding between the state employer and that bargaining unit, as specified.

Under existing case law, certain of the above provisions, which permit specified state employees to seek review of disciplinary actions through grievance or arbitration procedures outside of the State Personnel Board, were held to violate the state constitutional mandate that the board review disciplinary actions against state civil service employees.

This bill would repeal the disciplinary procedures described above, and certain other provisions relating to probationary periods, as those

procedures and provisions apply to State Bargaining Units 8, 11, 12, and 13. The bill would make other related changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1094.5 of the Code of Civil Procedure
2 is amended to read:
3 1094.5. (a) Where the writ is issued for the purpose of
4 inquiring into the validity of any final administrative order or
5 decision made as the result of a proceeding in which by law a
6 hearing is required to be given, evidence is required to be taken,
7 and discretion in the determination of facts is vested in the inferior
8 tribunal, corporation, board, or officer, the case shall be heard by
9 the court sitting without a jury. All or part of the record of the
10 proceedings before the inferior tribunal, corporation, board, or
11 officer may be filed with the petition, may be filed with
12 respondent's points and authorities, or may be ordered to be filed
13 by the court. Except when otherwise prescribed by statute, the cost
14 of preparing the record shall be borne by the petitioner. Where the
15 petitioner has proceeded pursuant to Section 68511.3 of the
16 Government Code and the Rules of Court implementing that
17 section and where the transcript is necessary to a proper review of
18 the administrative proceedings, the cost of preparing the transcript
19 shall be borne by the respondent. Where the party seeking the writ
20 has proceeded pursuant to Section 1088.5, the administrative record
21 shall be filed as expeditiously as possible, and may be filed with
22 the petition, or by the respondent after payment of the costs by the
23 petitioner, where required, or as otherwise directed by the court.
24 If the expense of preparing all or any part of the record has been
25 borne by the prevailing party, the expense shall be taxable as costs.
26 (b) The inquiry in such a case shall extend to the questions
27 whether the respondent has proceeded without, or in excess of
28 jurisdiction; whether there was a fair trial; and whether there was
29 any prejudicial abuse of discretion. Abuse of discretion is
30 established if the respondent has not proceeded in the manner
31 required by law, the order or decision is not supported by the
32 findings, or the findings are not supported by the evidence.

1 (c) Where it is claimed that the findings are not supported by
2 the evidence, in cases in which the court is authorized by law to
3 exercise its independent judgment on the evidence, abuse of
4 discretion is established if the court determines that the findings
5 are not supported by the weight of the evidence. In all other cases,
6 abuse of discretion is established if the court determines that the
7 findings are not supported by substantial evidence in the light of
8 the whole record.

9 (d) Notwithstanding subdivision (c), in cases arising from private
10 hospital boards or boards of directors of districts organized
11 pursuant to The Local Hospital District Law, Division 23
12 (commencing with Section 32000) of the Health and Safety Code
13 or governing bodies of municipal hospitals formed pursuant to
14 Article 7 (commencing with Section 37600) or Article 8
15 (commencing with Section 37650) of Chapter 5 of Division 3 of
16 Title 4 of the Government Code, abuse of discretion is established
17 if the court determines that the findings are not supported by
18 substantial evidence in the light of the whole record. However, in
19 all cases in which the petition alleges discriminatory actions
20 prohibited by Section 1316 of the Health and Safety Code, and the
21 plaintiff makes a preliminary showing of substantial evidence in
22 support of that allegation, the court shall exercise its independent
23 judgment on the evidence and abuse of discretion shall be
24 established if the court determines that the findings are not
25 supported by the weight of the evidence.

26 (e) Where the court finds that there is relevant evidence that, in
27 the exercise of reasonable diligence, could not have been produced
28 or that was improperly excluded at the hearing before respondent,
29 it may enter judgment as provided in subdivision (f) remanding
30 the case to be reconsidered in the light of that evidence; or, in cases
31 in which the court is authorized by law to exercise its independent
32 judgment on the evidence, the court may admit the evidence at the
33 hearing on the writ without remanding the case.

34 (f) The court shall enter judgment either commanding respondent
35 to set aside the order or decision, or denying the writ. Where the
36 judgment commands that the order or decision be set aside, it may
37 order the reconsideration of the case in the light of the court's
38 opinion and judgment and may order respondent to take such
39 further action as is specially enjoined upon it by law, but the

1 judgment shall not limit or control in any way the discretion legally
2 vested in the respondent.

3 (g) Except as provided in subdivision (h), the court in which
4 proceedings under this section are instituted may stay the operation
5 of the administrative order or decision pending the judgment of
6 the court, or until the filing of a notice of appeal from the judgment
7 or until the expiration of the time for filing the notice, whichever
8 occurs first. However, no such stay shall be imposed or continued
9 if the court is satisfied that it is against the public interest. The
10 application for the stay shall be accompanied by proof of service
11 of a copy of the application on the respondent. Service shall be
12 made in the manner provided by Title 5 (commencing with Section
13 405) of Part 2 or Chapter 5 (commencing with Section 1010) of
14 Title 14 of Part 2. If an appeal is taken from a denial of the writ,
15 the order or decision of the agency shall not be stayed except upon
16 the order of the court to which the appeal is taken. However, in
17 cases where a stay is in effect at the time of filing the notice of
18 appeal, the stay shall be continued by operation of law for a period
19 of 20 days from the filing of the notice. If an appeal is taken from
20 the granting of the writ, the order or decision of the agency is
21 stayed pending the determination of the appeal unless the court to
22 which the appeal is taken shall otherwise order. Where any final
23 administrative order or decision is the subject of proceedings under
24 this section, if the petition shall have been filed while the penalty
25 imposed is in full force and effect, the determination shall not be
26 considered to have become moot in cases where the penalty
27 imposed by the administrative agency has been completed or
28 complied with during the pendency of the proceedings.

29 (h) (1) The court in which proceedings under this section are
30 instituted may stay the operation of the administrative order or
31 decision of any licensed hospital or any state agency made after a
32 hearing required by statute to be conducted under the
33 Administrative Procedure Act, as set forth in Chapter 5
34 (commencing with Section 11500) of Part 1 of Division 3 of Title
35 2 of the Government Code, conducted by the agency itself or an
36 administrative law judge on the staff of the Office of
37 Administrative Hearings pending the judgment of the court, or
38 until the filing of a notice of appeal from the judgment or until the
39 expiration of the time for filing the notice, whichever occurs first.
40 However, the stay shall not be imposed or continued unless the

1 court is satisfied that the public interest will not suffer and that the
2 licensed hospital or agency is unlikely to prevail ultimately on the
3 merits. The application for the stay shall be accompanied by proof
4 of service of a copy of the application on the respondent. Service
5 shall be made in the manner provided by Title 5 (commencing
6 with Section 405) of Part 2 or Chapter 5 (commencing with Section
7 1010) of Title 14 of Part 2.

8 (2) The standard set forth in this subdivision for obtaining a
9 stay shall apply to any administrative order or decision of an
10 agency that issues licenses pursuant to Division 2 (commencing
11 with Section 500) of the Business and Professions Code or pursuant
12 to the Osteopathic Initiative Act or the Chiropractic Initiative Act.
13 With respect to orders or decisions of other state agencies, the
14 standard in this subdivision shall apply only when the agency has
15 adopted the proposed decision of the administrative law judge in
16 its entirety or has adopted the proposed decision but reduced the
17 proposed penalty pursuant to subdivision (b) of Section 11517 of
18 the Government Code; otherwise the standard in subdivision (g)
19 shall apply.

20 (3) If an appeal is taken from a denial of the writ, the order or
21 decision of the hospital or agency shall not be stayed except upon
22 the order of the court to which the appeal is taken. However, in
23 cases where a stay is in effect at the time of filing the notice of
24 appeal, the stay shall be continued by operation of law for a period
25 of 20 days from the filing of the notice. If an appeal is taken from
26 the granting of the writ, the order or decision of the hospital or
27 agency is stayed pending the determination of the appeal unless
28 the court to which the appeal is taken shall otherwise order. Where
29 any final administrative order or decision is the subject of
30 proceedings under this section, if the petition shall have been filed
31 while the penalty imposed is in full force and effect, the
32 determination shall not be considered to have become moot in
33 cases where the penalty imposed by the administrative agency has
34 been completed or complied with during the pendency of the
35 proceedings.

36 (i) Any administrative record received for filing by the clerk of
37 the court may be disposed of as provided in Sections 1952, 1952.2,
38 and 1952.3.

39 (j) Effective January 1, 1996, this subdivision shall apply to
40 state employees in State Bargaining Unit 5. For purposes of this

1 section, the court is not authorized to review any disciplinary
2 decisions reached pursuant to Section 19576.1 of the Government
3 Code.

4 SEC. 2. Section 18575 of the Government Code is repealed.

5 SEC. 3. Section 18575 is added to the Government Code, to
6 read:

7 18575. (a) Except as otherwise provided in subdivisions (b)
8 and (c), service by mail of any notice, paper, or document to be
9 served upon a person or appointing power shall be made in the
10 manner provided by Sections 1012 and 1013 of the Code of Civil
11 Procedure.

12 (b) (1) The appointing power shall provide service of the
13 following actions by personal service or by mail or express service
14 carrier as provided in this subdivision:

15 (A) Notice of disciplinary action.

16 (B) Notice of rejection during probationary period.

17 (C) Notice of medical action.

18 (D) Notice of nonpunitive action.

19 (E) Notice of career executive assignment termination.

20 (F) Notice of termination with fault of a limited term, seasonal,
21 or temporary authorization appointment.

22 (G) Notice of termination of an appointment under the Limited
23 Examination and Appointment Program.

24 (H) Notice of termination or automatic resignation of a
25 permanent intermittent employee.

26 (I) Notice of absence without leave resignation or separation
27 pursuant to Section 89541 of the Education Code.

28 (2) Service by mail of the notices listed in paragraph (1) shall
29 be made by enclosing the notice in a sealed envelope, addressed
30 to the last known residence address of the employee, and doing
31 any of the following:

32 (A) Deposit in the United States mail with postage fully prepaid,
33 certified with return receipt requested. Service is complete at the
34 time of deposit, but any period of notice or any right or duty to do
35 any act or make any response within any period or on a date certain
36 after the service of the document served by United States mail
37 shall be extended in accordance with subdivision (a) of Section
38 1013 of the Code of Civil Procedure.

39 (B) Deposit in the United States mail with Express Mail postage
40 fully prepaid. Service is complete at the time of deposit, but any

1 period of notice or any right or duty to do any act or make any
2 response within any period or on a date certain after the service
3 of the document served by Express Mail shall be extended by two
4 business days.

5 (C) Providing for overnight delivery, by deposit of the notice
6 in a box or other facility regularly maintained by an express service
7 carrier, or delivery to a courier or driver authorized by an express
8 service carrier to receive documents, in an envelope or package
9 designated by the express service carrier with delivery fees paid
10 or provided for, and with the employee or his or her designated
11 representative required to acknowledge receipt of the notice at the
12 time of delivery. Service is complete at the time of the deposit,
13 but any period of notice or any right or duty to do any act or make
14 any response within any period or on a date certain after the service
15 of the document served by overnight delivery shall be extended
16 by two business days.

17 (c) (1) Service of an appeal or complaint filed with the board
18 shall be made by personal service or by mail or express service
19 carrier as provided in this subdivision.

20 (2) Service by mail of an appeal or complaint filed with the
21 board shall be made by enclosing the notice in a sealed envelope,
22 addressed to the Appeals Division of the State Personnel Board,
23 and doing any of the following:

24 (A) Deposit in the United States mail with *first-class* postage
25 ~~fully prepaid, certified with return receipt requested~~ *prepaid*.
26 Service is complete at the time of deposit, but any period of notice
27 or any right or duty to do any act or make any response within any
28 period or on a date certain after the service of the document served
29 by United States mail shall be extended in accordance with
30 subdivision (a) of Section 1013 of the Code of Civil Procedure.

31 (B) Deposit in the United States mail with Express Mail postage
32 fully prepaid. Service is complete at the time of deposit, but any
33 period of notice or any right or duty to do any act or make any
34 response within any period or on a date certain after the service
35 of the document served by Express Mail shall be extended by two
36 business days.

37 (C) Providing for overnight delivery, by deposit of the appeal
38 or complaint in a box or other facility regularly maintained by an
39 express service carrier, or delivery to a courier or driver authorized
40 by an express service carrier to receive documents, in an envelope

1 or package designated by the express service carrier with delivery
2 fees paid or provided for, and with the authorized representative
3 of the State Personnel Board required to acknowledge receipt of
4 the appeal or complaint at the time of delivery. Service is complete
5 at the time of the deposit, but any period of notice or any right or
6 duty to do any act or make any response within any period or on
7 a date certain after the service of the document served by overnight
8 delivery shall be extended by two business days.

9 (d) (1) Proof of service of all papers, ~~including~~ *excluding*
10 appeals and complaints, shall be an affidavit stating the title of the
11 papers served or filed, the name and address of the person making
12 the service, and that he or she is over 18 years of age and not a
13 party to the action. The proof of service shall be signed by the
14 person making it and contain the following statement above the
15 signature, below which the declarant's name shall be typed and
16 signed:

17 "I declare under penalty of perjury under the laws of the State
18 of California that the foregoing is true and correct, and this
19 declaration was executed at (city, state) on (date)."

20 (2) (A) If service is made by mail or express service carrier, in
21 addition to the information provided in paragraph (1), the proof
22 of service shall show the date and place of deposit, the name and
23 address of the person served as shown on the mailing envelope,
24 and that the envelope was sealed and deposited in the mail or
25 provided for overnight delivery, as appropriate.

26 (B) A proof of service made in accordance with Section 1013a
27 of the Code of Civil Procedure complies with this paragraph.

28 SEC. 4. Section 18670 of the Government Code is amended
29 to read:

30 18670. (a) The board may hold hearings and make
31 investigations concerning all matters relating to the enforcement
32 and effect of this part and rules prescribed under this part. It may
33 inspect any state institution, office, or other place of employment
34 affected by this part to ascertain whether this part and the board
35 rules are obeyed.

36 The board shall make investigations and hold hearings at the
37 direction of the Governor or the Legislature or upon the petition
38 of an employee or a citizen concerning the enforcement and effect
39 of this part and to enforce the observance of Article VII of the
40 Constitution and of this part and the rules made under this part.

(b) Effective January 1, 1996, this subdivision shall apply only to state employees in State Bargaining Unit 5. For purposes of subdivision (a), any discipline, as defined by Section 19576.1, is not subject to either a board investigation or hearing. Board review shall be limited to acceptance or rejection of discipline imposed pursuant to Section 19576.1.

SEC. 5. Section 19173.1 of the Government Code is repealed.

SEC. 6. Section 19175 of the Government Code is amended to read:

19175. The board at the written request of a rejected probationer, filed within 15 calendar days of the effective date of rejection, may investigate with or without a hearing the reasons for rejection. After investigation, the board may do any of the following:

(a) Affirm the action of the appointing power.

(b) Modify the action of the appointing power.

(c) Restore the name of the rejected probationer to the employment list for certification to any position within the class; provided, that his or her name shall not be certified to the agency by which he or she was rejected, except with the concurrence of the appointing power of that agency.

(d) Restore him or her to the position from which he or she was rejected, but this shall be done only if the board determines, after a hearing, that there is no substantial evidence to support the reason or reasons for rejection, or that the rejection was made in fraud or bad faith. At the hearing, the rejected probationer shall have the burden of proof. Subject to rebuttal by the rejected probationer, it shall be presumed that the rejection was free from fraud and bad faith and that the statement of reasons therefor in the notice of rejection is true.

(e) Effective January 1, 1996, this section shall not apply to state employees in State Bargaining Unit 5.

SEC. 7. Section 19175.3 of the Government Code is repealed.

SEC. 8. Section 19570.1 of the Government Code is repealed.

SEC. 9. Section 19572.1 of the Government Code is repealed.

SEC. 10. Section 19574 of the Government Code is amended to read:

19574. (a) The appointing power, or its authorized representative, may take adverse action against an employee for one or more of the causes for discipline specified in this article.

1 Adverse action is valid only if a written notice is served on the
2 employee prior to the effective date of the action, as defined by
3 board rule. The notice shall be served upon the employee either
4 personally or by mail and shall include: (1) a statement of the
5 nature of the adverse action; (2) the effective date of the action;
6 (3) a statement of the reasons therefor in ordinary language; (4) a
7 statement advising the employee of the right to answer the notice
8 orally or in writing; and (5) a statement advising the employee of
9 the time within which an appeal must be filed. The notice shall be
10 filed with the board not later than 15 calendar days after the
11 effective date of the adverse action.

12 (b) Effective January 1, 1996, this subdivision shall apply only
13 to state employees in State Bargaining Unit 5. This section shall
14 not apply to discipline as defined by Section 19576.1.

15 SEC. 11. Section 19574.1 of the Government Code is amended
16 to read:

17 19574.1. (a) An employee who has been served with notice
18 of adverse action, or a representative designated by the employee,
19 shall have the right to inspect any documents in the possession of,
20 or under the control of, the appointing power which are relevant
21 to the adverse action taken or which would constitute "relevant
22 evidence" as defined in Section 210 of the Evidence Code. The
23 employee, or the designated representative, shall also have the
24 right to interview other employees having knowledge of the acts
25 or omissions upon which the adverse action was based. Interviews
26 of other employees and inspection of documents shall be at times
27 and places reasonable for the employee and for the appointing
28 power.

29 (b) The appointing power shall make all reasonable efforts
30 necessary to assure the cooperation of any other employees
31 interviewed pursuant to this section.

32 SEC. 12. Section 19574.2 of the Government Code is amended
33 to read:

34 19574.2. (a) Any party claiming that his or her request for
35 discovery pursuant to Section 19574.1 has not been complied with
36 may serve and file a petition to compel discovery with the Hearing
37 Office of the State Personnel Board, naming as respondent the
38 party refusing or failing to comply with Section 19574.1. The
39 petition shall state facts showing that the respondent party failed
40 or refused to comply with Section 19574.1, a description of the

1 matters sought to be discovered, the reason or reasons why the
2 matter is discoverable under Section 19574.1, and the ground or
3 grounds of respondent's refusal so far as known to petitioner.

4 (b) The petition shall be served upon respondent party and filed
5 within 14 days after the respondent party first evidenced his or her
6 failure or refusal to comply with Section 19574.1 or within 30
7 days after the request was made and the party has failed to reply
8 to the request, whichever period is longer. However, no petition
9 may be filed within 15 days of the date set for commencement of
10 the administrative hearing, except upon a petition and a
11 determination by the administrative law judge of good cause. In
12 determining good cause, the administrative law judge shall consider
13 the necessity and reasons for the discovery, the diligence or lack
14 of diligence of the moving party, whether the granting of the
15 petition will delay the commencement of the administrative hearing
16 on the date set, and the possible prejudice of the action to any
17 party. The respondent shall have a right to file a written answer to
18 the petition. Any answer shall be filed with the Hearing Office of
19 the State Personnel Board and the petitioner within 15 days of
20 service of the petition.

21 Unless otherwise stipulated by the parties and as provided by
22 this section, the administrative law judge shall review the petition
23 and any response filed by the respondent and issue a decision
24 granting or denying the petition within 20 days after the filing of
25 the petition. Nothing in this section shall preclude the
26 administrative law judge from determining that an evidentiary
27 hearing shall be conducted prior to the issuance of a decision on
28 the petition. In the event that a hearing is ordered, the decision of
29 the administrative law judge shall be issued within 20 days of the
30 closing of the hearing.

31 A party aggrieved by the decision of the administrative law judge
32 may, within 30 days of service of the decision, file a petition to
33 compel discovery in the superior court for the county in which the
34 administrative hearing will be held or in the county in which the
35 headquarters of the appointing power is located. The petition shall
36 be served on the respondent party.

37 (c) If from a reading of the petition the court is satisfied that the
38 petition sets forth good cause for relief, the court shall issue an
39 order to show cause directed to the respondent party; otherwise
40 the court shall enter an order denying the petition. The order to

1 show cause shall be served upon the respondent and his or her
2 attorney of record in the administrative proceeding by personal
3 delivery or certified mail and shall be returnable no earlier than
4 10 days from its issuance nor later than 30 days after the filing of
5 the petition. The respondent party shall have the right to serve and
6 file a written answer or other response to the petition and order to
7 show cause.

8 (d) The court may, in its discretion, order the administrative
9 proceeding stayed during the pendency of the proceeding, and, if
10 necessary, for a reasonable time thereafter to afford the parties
11 time to comply with the court order.

12 (e) Where the matter sought to be discovered is under the
13 custody or control of the respondent party and the respondent party
14 asserts that the matter is not a discoverable matter under Section
15 19574.1, or is privileged against disclosure under Section 19574.1,
16 the court may order lodged with it matters which are provided in
17 subdivision (b) of Section 915 of the Evidence Code and shall
18 examine the matters in accordance with the provisions thereof.

19 (f) The court shall decide the case on the matters examined by
20 the court in camera, the papers filed by the parties, and any oral
21 argument and additional evidence as the court may allow.

22 (g) Unless otherwise stipulated by the parties, the court shall
23 no later than 45 days after the filing of the petition file its order
24 denying or granting the petition; provided, however, that the court
25 may on its own motion for good cause extend the time an additional
26 45 days. The order of the court shall be in writing setting forth the
27 matters or parts the petitioner is entitled to discover under Section
28 19574.1. A copy of the order shall forthwith be served by mail by
29 the clerk upon the parties. Where the order grants the petition in
30 whole or in part, the order shall not become effective until 10 days
31 after the date the order is served by the clerk. Where the order
32 denies relief to the petitioning party, the order shall be effective
33 on the date it is served by the clerk.

34 (h) The order of the superior court shall be final and, except for
35 this subdivision, shall not be subject to review by appeal. A party
36 aggrieved by the order, or any part thereof, may within 30 days
37 after the service of the superior court's order serve and file in the
38 district court of appeal for the district in which the superior court
39 is located, a petition for a writ of mandamus to compel the superior
40 court to set aside, or otherwise modify, its order. Where a review

1 is sought from an order granting discovery, the order of the trial
2 court and the administrative proceeding shall be stayed upon the
3 filing of the petition for writ of mandamus; provided, however,
4 that the court of appeal may dissolve or modify the stay thereafter,
5 if it is in the public interest to do so. Where the review is sought
6 from a denial of discovery, neither the trial court's order nor the
7 administrative proceeding shall be stayed by the court of appeal
8 except upon a clear showing of probable error.

9 (i) Where the superior court finds that a party or his or her
10 attorney, without substantial justification, failed or refused to
11 comply with Section 19574.1, or, without substantial justification,
12 filed a petition to compel discovery pursuant to this section, or,
13 without substantial justification, failed to comply with any order
14 of court made pursuant to this section, the court may award court
15 costs and reasonable attorney fees to the opposing party. Nothing
16 in this subdivision shall limit the power of the superior court to
17 compel obedience to its orders by contempt proceedings.

18 SEC. 13. Section 19575 of the Government Code is amended
19 to read:

20 19575. The employee has 30 calendar days after the effective
21 date of the adverse action to file with the board a written answer
22 to the notice of adverse action. The answer shall be deemed to be
23 a denial of all of the allegations of the notice of adverse action not
24 expressly admitted and a request for hearing or investigation as
25 provided in this article. With the consent of the board or its
26 authorized representative an amended answer may subsequently
27 be filed. If the employee fails to answer within the time specified
28 or after answer withdraws his or her appeal the adverse action
29 taken by the appointing power shall be final. A copy of the
30 employee's answer and of any amended answer shall promptly be
31 given by the board to the appointing power.

32 SEC. 14. Section 19576 of the Government Code is amended
33 to read:

34 19576. Whenever an answer is filed by an employee who has
35 been suspended without pay for five days or less, or who has
36 received a formal reprimand or up to a one-step reduction in pay
37 for four months or less, the board or its authorized representative
38 shall make an investigation with or without a hearing as it deems
39 necessary. However, in the event an employee receives one of
40 these actions under subdivision (r) of Section 19572 for behavior

1 or acts outside of duty hours, the employee shall, if he or she files
2 an answer to the action, be afforded a hearing. If the employee
3 receives one of the cited actions in more than three instances in
4 any 12-month period, the employee shall, upon each additional
5 action within the same 12-month period, be afforded a hearing if
6 the employee files an answer to the action.

7 If the provisions of this section concerning whether a hearing
8 should be held are in conflict with the provisions of a memorandum
9 of understanding reached pursuant to the State Employer-Employee
10 Relations Act (SEERA), commencing with Section 3512, the
11 memorandum of understanding shall be controlling without further
12 legislative action, except that if those provisions of a memorandum
13 of understanding require the expenditure of funds, the provisions
14 shall not become effective unless approved by the Legislature in
15 the annual Budget Act.

16 SEC. 15. Section 19576.5 of the Government Code is repealed.

17 SEC. 16. Section 19576.6 of the Government Code is repealed.

18 SEC. 17. Section 19578 of the Government Code is amended
19 to read:

20 19578. Except as provided in Section 19576, whenever an
21 answer is filed to an adverse action, the board or its authorized
22 representative shall within a reasonable time hold a hearing. The
23 board shall notify the parties of the time and place of the hearing.
24 The hearing shall be conducted in accordance with the provisions
25 of Section 11513 of the Government Code, except that the
26 employee and other persons may be examined as provided in
27 Section 19580, and the parties may submit all proper and competent
28 evidence against or in support of the causes.

29 SEC. 18. Section 19582 of the Government Code is amended
30 to read:

31 19582. (a) Hearings may be held by the board, or by any
32 authorized representative, but the board shall render the decision
33 that in its judgment is just and proper.

34 During a hearing, after the appointing authority has completed
35 the opening statement or the presentation of evidence, the
36 employee, without waiving his or her right to offer evidence in the
37 event the motion is not granted, may move for a dismissal of the
38 charges.

39 If it appears that the evidence presented supports the granting
40 of the motion as to some but not all of the issues involved in the

1 action, the board or the authorized representative shall grant the
2 motion as to those issues and the action shall proceed as to the
3 issues remaining. Despite the granting of the motion, no judgment
4 shall be entered prior to a final determination of the action on the
5 remaining issues, and shall be subject to final review and approval
6 by the board.

7 (b) If a contested case is heard by an authorized representative,
8 he or she shall prepare a proposed decision in a form that may be
9 adopted as the decision in the case. A copy of the proposed decision
10 shall be filed by the board as a public record and furnished to each
11 party within 10 days after the proposed decision is filed with the
12 board. The board itself may adopt the proposed decision in its
13 entirety, may remand the proposed decision, or may reduce the
14 adverse action set forth therein and adopt the balance of the
15 proposed decision.

16 (c) If the proposed decision is not remanded or adopted as
17 provided in subdivision (b), each party shall be notified of the
18 action, and the board itself may decide the case upon the record,
19 including the transcript, with or without taking any additional
20 evidence, or may refer the case to the same or another authorized
21 representative to take additional evidence. If the case is so assigned
22 to an authorized representative, he or she shall prepare a proposed
23 decision as provided in subdivision (b) upon the additional
24 evidence and the transcript and other papers that are part of the
25 record of the prior hearing. A copy of the proposed decision shall
26 be furnished to each party. The board itself shall decide no case
27 provided for in this subdivision without affording the parties the
28 opportunity to present oral and written argument before the board
29 itself. If additional oral evidence is introduced before the board
30 itself, no board member may vote unless he or she heard the
31 additional oral evidence.

32 (d) In arriving at a decision or a proposed decision, the board
33 or its authorized representative may consider any prior suspension
34 or suspensions of the appellant by authority of any appointing
35 power, or any prior proceedings under this article.

36 (e) The decision shall be in writing and contain findings of fact
37 and the adverse action, if any. The findings may be stated in the
38 language of the pleadings or by reference thereto. Copies of the
39 decision shall be served on the parties personally or by mail.

40 SEC. 19. Section 19582.1 of the Government Code is repealed.

1 SEC. 20. Section 19582.6 of the Government Code is repealed.

2 SEC. 21. Section 19583 of the Government Code is amended
3 to read:

4 19583. The board shall render a decision within a reasonable
5 time after the hearing or investigation. The adverse action taken
6 by the appointing power shall stand unless modified or revoked
7 by the board. If the board finds that the cause or causes for which
8 the adverse action was imposed were insufficient or not sustained,
9 or that the employee was justified in the course of conduct upon
10 which the causes were based, it may modify or revoke the adverse
11 action and it may order the employee returned to his or her position
12 with appropriate restoration of backpay and lost benefits either as
13 of the date of the adverse action or as of such later date as it may
14 specify. The decision of the board shall be entered upon the minutes
15 of the board and the official roster.

O